

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DONTE LOFTON,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 2:21-cv-00244-KJD-BNW

ORDER

Presently before the Court is Defendant Mary Baker's Motion to Dismiss (#45). The time for filing an opposition has passed, and Plaintiff has not responded.

I. Factual and Procedural Background

Plaintiff Donte Lofton ("Lofton"), previously a prisoner in the custody of Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, asserting that Parole Board Defendant Mary Baker ("Baker") incorrectly denied Lofton parole. Lofton was seen by the Parole Board on December 26, 2019. (#45-1, at 2). He was denied parole for a variety of reasons, including his prior prison term not deterring future criminal activity, his prior conviction for a violent offense, his repetitive criminal conduct, and his impact on victims and/or community. Id. This denial was unanimous. Id. There is no evidence that Lofton appealed his parole denial.

After a mandatory screening, as to Baker, two causes of action remain. (#38). They are individual and capacity claims for First Amendment free exercise of religion under the U.S. and Nevada Constitutions. Id. Lofton asserts that being denied parole was wrong and that Baker should have known that U.S. and Nevada constitutional rights can be exercised while in prison. (#39, at 3). He essentially asserts that because during his parole hearing Baker mentioned that he

1 violated prison rules and procedures, this was a violation of his constitutional rights. Id. at 11. He
 2 seeks emotional, compensatory, and punitive damages for each claim. Id. at 12. Baker now asks
 3 the Court to dismiss her from this case for failure to state any legal arguments or facts sufficient
 4 to raise any legally cognizable claim. (#45, at 5).

5 II. Motion to Dismiss Legal Standard

6 A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint and authorizes
 7 the dismissal of a complaint when there has been a failure to state a claim upon which relief can
 8 be granted. Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain
 9 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
 10 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S.
 11 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff has
 12 pleaded facts which allow “the court to draw the reasonable inference that the defendant is liable
 13 for the misconduct alleged.” Id.

14 The Iqbal evaluation illustrates a two-prong analysis. First, the Court identifies “the
 15 allegations in the complaint that are not entitled to the assumption of truth,” that is, those
 16 allegations which are legal conclusions, bare assertions, or merely conclusory. Id. at 1949-51.
 17 Second, the Court considers the factual allegations “to determine if they plausibly suggest an
 18 entitlement to relief.” Id. at 1951. If the allegations state plausible claims for relief, such claims
 19 survive the motion to dismiss. Id. at 1950.

20 III. Analysis

21 The Nevada Legislature has expressly stated that its creation of standards relating to parole
 22 does not establish a basis for any cause of action. NRS 213.10705. “[P]arole is an act of grace of
 23 the State and there is no cause of action when parole has been denied.” Bacon v. State Bd. of
 24 Parole Comm’rs, No. 61178, 2013 WL 593809, at *1 (Nev. Feb. 13, 2013) (citing NRS
 25 213.10705). “No person has a right to parole or probation, or to be placed in residential
 26 confinement, and it is not intended that the establishment of standards relating thereto create any
 27 such right or interest in liberty or property or establish a basis for any cause of action against the
 28 State, its political subdivisions, agencies, boards, commissions, departments, officers or

1 employees.” NRS 213.10705.

2 Lofton has not presented any opposing argument on this matter. In his complaint, he argues
3 that because there was an alleged reference to his violation of prison procedure during the
4 hearing, this amounted to a violation of his constitutional rights. However, Lofton’s parole was
5 denied for the aggravated factors as explained above and not because of his violation of any
6 prison rules. Further, because there is no cause of action for denying parole, the Court finds that
7 Lofton’s claim against Baker should be dismissed.

8 IV. Conclusion

9 Accordingly, **IT IS HEREBY ORDERED** that Defendant Mary Baker’s Motion to Dismiss
10 (#45) is **GRANTED**.

11 **IT IS FURTHER ORDERED** that the Clerk of the Court enter **JUDGMENT** for Defendant
12 Mary Baker and against Plaintiff.

13 DATED this 17th day of March 2023.



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15 Kent J. Dawson
16 United States District Judge
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